TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~226.~~ 32

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

ANTONIO JOSEPH.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

PHILADELPHIA BAR ASSOCIATION

FILED AUGUST 15, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 226.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

ANTONIO JOSEPH.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

INDEX.

	Original.	Print.
Writ of error	1	1
Transcript from district court	3	1
Plaintiffs' petition	4	2
Summons to defendant	7	3
Return of marshal to summons	8	3
Demurrer to petition	9	4
Joinder on demurrer	10	4
Judgment sustaining demurrer	11	5
Motion for appeal	12	5
Affidavit for appeal	13	6
Allowance of appeal	14	6
Clerk's certificate, (district court)	14	6
Extension of time to file assignment of errors, &c.	15	6
Assignment of errors	15	7
Joinder in error	16	7
Order for argument	17	7
Cause argued and taken under advisement	17	7
Judgment of affirmance	18	8
Order granting writ of error	18	8
Clerk's certificate	19	8
Citation and service	20	8

1 The Supreme Court of the United States have sent to the judges of the supreme court of the Territory of New Mexico their writ, which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorables the judges of the supreme court of the Territory of New Mexico, greeting:

Because in the record and proceedings, as also in the rendition of judgment in a plea of debt, before you, between the United States of America and Antonio Joseph, manifest error hath intervened, as is alleged, to the damage of the said United States of America, as by their complaint appears, and we being willing that the error, if any there hath been, should be duly corrected, and speedy justice done to the parties aforesaid in this behalf, do hereby command you, if final judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington,

2 D. C., on the second Monday of October next, at the term of said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Nathan Clifford, senior associate justice of the Supreme Court of the United States, this 26th day of January, A. D. 1874.

Issued at office in the city of Santa Fé, N. M., with the seal of the supreme court of the Territory of New Mexico.

[SEAL.]

R. J. PALEN,
Clerk S. C. Terr. N. M.

Allowed January 26th, A. D. 1874.

J. G. PALEN,
Chief-Justice Sup. Ct. Terr. N. M.

(Endorsed:) Filed in my office this 26th day of January, A. D. 1874.

R. J. PALEN,
Clerk S. C. N. M.

The answer of the judges of the supreme court of the Terri-

3 tory of New Mexico to the foregoing writ is contained in the transcript hereto annexed.

By the court.

R. J. PALEN, *Clerk.*

Transcript.

Pleas in the supreme court of the Territory of New Mexico, at a regular term begun and held within and for said Territory, at the city of Santa Fé, on the fifth day of January, A. D. 1874. Present, the Hon. Joseph G. Palen, chief-justice, Hon. Hezekiah S. Johnson, and Hon. Warren Bristol, associate justices.

Be it remembered that heretofore, to wit, on the fifth day of No.

vember, A. D. 1873, the following transcript was filed in the clerk's office of said supreme court, which transcript is in the words and figures following, to wit:

Pleas in the United States district court for the first judicial district of the Territory of New Mexico, at a regular term begun and held within and for said first judicial district, at the city of Santa Fé, on the fourteenth day of July, in the year one thousand eight
4 hundred and seventy-three, on the nineteenth day of said term, being the fourth day of August, A. D. 1873, the Hon Joseph G. Palen, chief-justice of the supreme court of said Territory and judge of the first judicial district court thereof, presiding.

THE UNITED STATES OF AMERICA,
vs.
ANTONIO JOSEPH. } 167. Debt on statute.

Be it remembered that heretofore, to wit, on the thirtieth day of June, A. D. 1873, the said plaintiffs, by Thomas B. Catron, their district attorney, filed in the office of the clerk of said court the following petition, which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Territory of New Mexico, First Judicial District:

In district court for the first judicial district of New Mexico, sitting for the trial of causes arising under the Constitution and laws of the United States, at the July term, A. D. 1873.

To the Hon. Joseph G. Palen, chief-justice of the supreme court of the Territory of New Mexico and judge of the first judicial district court thereof:

The United States of America, who sue for themselves in this
5 behalf, by Thomas B. Catron, their attorney, who prosecutes for them within and for the Territory of New Mexico, complain of Antonio Joseph, a resident of the county of Taos, in the said first judicial district, and Territory aforesaid, that he render unto the United States, who sue as aforesaid, the sum of one thousand dollars, which he owes to and wrongfully detains from the said United States, for that whereas the said defendant heretofore, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, at, to wit, the first judicial district of the Territory of New Mexico aforesaid, did make a settlement on, and now occupies and is settled on, lands of the Pueblo tribe of Indians of the Pueblo of Taos, situated in the county of Taos, in said district and Territory—said lands being described as follows, to wit: Commencing at a stone with mound of stones standing two miles forty-eight and thirty-three and one-third hundredths chains west from the cross in the cemetery of said Pueblo Indians, in said county of Taos, and running thence south two miles forty-eight and thirty-three and one-third hundredths chains to a stone with mound of stones and earth at the southwest corner of said lands; thence east five miles sixteen and sixty-six and two-thirds hundredths chains to the southeast corner of said lands; thence north five miles sixteen
6 and sixty-six and two-thirds hundredths chains to the northeast corner of said lands; thence west five miles sixteen and sixty-six and two-thirds hundredths chains to a stone with mound of stones to the northwest corner of said lands; thence two miles forty-eight and

thirty-three and one-third hundredths chains to the place of beginning—to wit, on ten acres of said lands, by then and there building houses and making fields thereon, contrary to the form of the statute in such case made and provided, said lands then and there and at the time of bringing this suit belonging to the said Pueblo tribe of Indians of the Pueblo of Taos aforesaid, and secured to the said Pueblo tribe of Indians of the Pueblo of Taos aforesaid by patent from the said United States.

Whereby and by force of the statute in such case made and provided an action hath accrued unto the said United States, who sue as aforesaid, to demand and have of the said defendant, for herself, the sum of one thousand dollars, which the said defendant has forfeited and become liable to pay to the said United States for his said offense, the same being the amount imposed by said statute for settling on lands belonging, secured, or granted by treaty with the United States to any Indian tribe, and which said sum of one thousand dollars he, the said defendant, hath wholly neglected and refused, and still does neglect and refuse, to pay to the said United States.

7 The said United States, plaintiff as aforesaid, therefore brings suit and ask judgment of this hon. court against said defendant for said sum of one thousand dollars, together with costs of suit.

T. B. CATRON,
U. S. Dist. Atty. for N. M.

And afterwards, to wit, on the same day and year last aforesaid, there issued out of and under the seal of the said court the following writ; which writ is in the words and figures following, to wit:

The President of the United States of America to the United States marshal for the Territory of New Mexico, greeting:

You are hereby commanded to summon Antonio Joseph to be and appear before the United States district court for the first judicial district of the Territory of New Mexico, to be begun and held at the county of Santa Fé, in said Territory, at the court-house of said county, on the 2d Monday of July, A. D. eighteen hundred and seventy-three, to answer unto the United States in an action of debt on statute; amount claimed one thousand dollars, with costs of suit; and have you then and there this writ.

Witness the Hon. Joseph G. Paley, chief-justice of the supreme court and judge of the said district court of said Territory, and the seal of said district court, this 30th day of June, A. D. 1873.

8 [SEAL.] M. A. BREEDEN, *Clerk.*

And which writ was endorsed as follows, to wit:

This is an action of debt on statute for illegally settling on Indian lands of the tribe known as Pueblo Indians. Damages claimed one thousand dollars and costs of suit.

M. A. BREEDEN, *Clerk.*

And afterwards, to wit, on the third day of July, A. D. 1873, the said marshal made return to the said writ in the words and figures following, to wit:

I certify that I have served the within summons by delivering a true copy to José Ma. Angdado, a free person above the age of fifteen years, residing at usual place of abode of said Antonio Joseph, he being absent, July 3d, 1873.

JNO. PRATT, *U. S. Marshal,*
By FELIPE ROMERO, *Deputy.*

Which return was filed in the clerk's office of said district court on the 17th of July, A. D. 1873.

And afterwards, to wit, on the twenty-first day of July, A. D. 1873, the said defendant, by his attorney, filed in the clerk's office of said district court his demurrer to the said petition of the said plaintiffs; which demurrer is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico:

First judicial district court, July term, 1873.

9 THE UNITED STATES } Debt.
vs.
ANTONIO JOSEPH. }

And the said defendant, by his attorney, comes and defends the wrong and injury, when, etc., and says that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same; and this he is ready to verify. Wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against him, etc.

And the said defendant states and shows to the court here the following causes demurrer to the said declaration:

First. The said declaration shows that in case said lands belong to any Indian tribe, they belong to Pueblo Indians, who are citizens of the United States, and not to such Indian tribes as is contemplated by the statute of the United States.

Second. That said declaration shows that said lands were se-
10 cured to the said Pueblo Indians by patent from the United States, containing the same conditions, powers, and authorities to the said patentees to transmit and convey their said lands as is given to any other citizens of the United States, and does not show that said lands have never been sold, transferred, or conveyed by said Pueblo Indians.

And also that the said declaration is in other respects uncertain, informal, and insufficient, etc.

R. H. TOMPKINS,
Attorney for Defendant.

And afterwards, to wit, on the twenty-second day of July, A. D. 1873, the said plaintiffs filed in the clerk's office of said court their joinder to the said demurrer, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA } Debt.
vs.
ANTONIO JOSEPH. }

In the United States district court for the first judicial district of the Territory of New Mexico, July term, A. D. 1873.

And the plaintiffs say that the said petition and the matters

therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for them, the said plaintiffs,
11 to have and maintain their aforesaid action thereof against the said defendant; and the said plaintiffs are ready to verify and prove the same as the court here shall direct and award.

Wherefore, inasmuch as the said defendant has not answered the said petition, nor hitherto in any manner denied the same, the said plaintiffs pray judgment and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, etc.

T. B. CATRON,
U. S. Attorney for N. M.

And now, on this day, to wit, the day and year first aforesaid, the following judgment was rendered and entered in the above-entitled cause; which judgment is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA
vs.
ANTONIO JOSEPH. } 167. Debt on statute.

This cause came on to be heard upon the demurrer of the said Antonio Joseph to the petition of the said United States of America, and was argued by counsel; and the court, being fully advised in the premises, is of opinion that the said petition and the matters therein
12 contained are not sufficient in law to maintain the action of the said United States of America against the said Antonio Joseph.

Therefore it is considered that the said demurrer be, and the same is hereby, sustained, and that the said Antonio Joseph go hence without day.

And afterwards, to wit, on the same day and year last aforesaid, the said plaintiffs filed in the clerk's office of said district court a motion for an appeal from said judgment; which motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA
vs.
ANTONIO JOSEPH. } Debt.

In the district court, first judicial district of the United States, July term, A. D. 1873.

Now come the said plaintiffs, by their attorney, and move the court to grant an appeal herein to the supreme court of the Territory of New Mexico from the final judgment of this court sustaining the demurrer of said defendant, and files herewith an affidavit, as required by the statute in such case made and provided.

T. B. CATRON,
U. S. Atty.

13 And afterwards, to wit, on the same day and year last aforesaid, the said plaintiffs filed in the clerk's office of said court the affidavit referred to in the foregoing motion; which affidavit is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Territory of New Mexico, First Judicial District:

THE UNITED STATES OF AMERICA
vs.
ANTONIO JOSEPH. } Debt.

Thomas B. Catron, being duly sworn, declares and says that he is the attorney for the United States in the above-entitled cause, and that the appeal applied for in the said cause is not taken for the purpose of vexation or delay, but because the said affiant believes the said appellants, the said United States, are aggrieved by the decision and judgment of the court in the premises.

THOMAS B. CATRON.

Sworn to and subscribed before me this, the 4th day of August, A. D. 1873.

R. J. PALEN, *Clerk.*

And afterwards, to wit, on the same day and year last aforesaid, the following order was made and entered in this cause; which order is in the words and figures following, to wit:

14 THE UNITED STATES OF AMERICA
vs.
ANTONIO JOSEPH. } 167. Debt on statu'e.

And now come the said United States of America, by their district attorney, and pray for an appeal from the judgment rendered in this cause to the supreme court of the Territory of New Mexico, which is hereby allowed them.

UNITED STATES OF AMERICA,
Territory of New Mexico, First Judicial District, ss:

I, Rufus J. Palen, clerk of the United States district court for the first judicial district of the Territory of New Mexico, do hereby certify that the foregoing eleven pages contain a true and complete record of the judgment and proceedings in this cause, as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and the seal of said court this 18th day of October, A. D. 1873.

[SEAL.] R. J. PALEN, *Clerk.*

And be it further remembered, that afterwards, to wit, at the term of said supreme court first aforesaid, on the first day of said term,
15 the following order was made and entered in this cause, and in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, APPELLANTS,
vs.
ANTONIO JOSEPH, APPELLEE. } 68. Appeal. First judicial district. C. J. Palen.

Upon application of the said appellants, by their district attorney, the counsel for said appellee consenting thereto, the time for filing assignment of errors and the briefs required by the rules of this court, is ex-

tended till Monday next, and a like extension to two days thereafter granted to said appellee to file joinder in error.

And afterwards, to wit, on the 12th day of January, A. D. 1874, the said appellants filed in the clerk's office of said court the following assignment of errors, which is in the words and figures following, to wit:

Assignment of errors.

Supreme court, January term, 1874.

THE UNITED STATES
vs.
ANTONIO JOSEPH.

And the said plaintiffs, by their attorney, T. B. Catron, now come and say that in the record and proceedings aforesaid there is manifest error in this, to wit:

16 The court below erred in rendering judgment on the demurrer in favor of the defendant instead of in favor of the plaintiffs, as by the law of the land it should have been given.

Wherefore the said plaintiffs pray that the said judgment may be reserved, annulled, and held for nought, and that they may be restored to all things they have lost by reason thereof.

T. B. CATRON,
Atty. for Plffs.

And afterward, to wit, on the 15th day of January, A. D. 1874, the said appellee, by his counsel, filed in the clerk's office of said court his joinder in error, which is in the words and figures following, to wit:

THE UNITED STATES
vs.
ANTONIO JOSEPH. } Joinder in error.

And the said defendant says that there is no error in the record.

R. H. TOMPKINS,
Atty. for Defendant.

And afterwards, to wit, on the eighth day of said term of said court, being the 13th day of January, A. D. 1874, the following order was made and entered in this cause, and in the words and figures following, to wit:

17 THE UNITED STATES OF AMERICA, appellants,
vs.
ANTONIO JOSEPH, APPELLEE. } 68. Appeal. First judicial district. C. J. Palen.

This cause is now set down for argument on Thursday next.

And afterwards, to wit, on the tenth day of said term of said court, being the 15th day of January, A. D. 1874, the following order was made and entered in this cause, and in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, APPELLANTS,
vs.
ANTONIO JOSEPH, APPELLEE. } 68. Appeal. First judicial district.

This cause now came on to be heard, and was argued by the U. S.

district attorney for the appellants, and by counsel for appellee, and, the argument being concluded, is now submitted to the court for its decision, and the court, not being sufficiently advised in the premises, takes the same under advisement.

And afterwards, to wit, on the nineteenth day of said term of said court, being the 26th day of January, A. D. 1874, the following judgment was rendered and entered in this cause; which judgment is in the words and figures following, to wit:

18 THE UNITED STATES OF AMERICA, appellants, *vs.* ANTONIO JOSEPH, APPELLEE. } 68. Appeal. First judicial district.

This cause having been argued by counsel and submitted at a former day of this term, and having been then taken under advisement, the court, being now fully advised in the premises, announces its decision by Associate Justice Johnson, affirming the judgment of the court below.

It is therefore considered and adjudged that the judgment of the United States district court for the first judicial district in this cause be, and the same is hereby, affirmed.

Opinion to be filed by Associate Justice Bristol.

And afterwards, to wit, at the term and on the day and year last aforesaid, the following order was made and entered in this cause, and in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, APPELLANTS, *vs.* ANTONIO JOSEPH, APPELLEE. } 68. Appeal. First judicial district.

On application of the said appellants, by their district attorney, it is ordered that a writ of error herein be, and the same is hereby,
19 allowed.

TERRITORY OF NEW MEXICO, *ss:*

I, R. J. Palen, clerk of the supreme court of said Territory, do hereby certify that the foregoing eighteen pages contain a full, true, and perfect record of the judgment and proceedings in the above-entitled cause, as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Santa Fé, N. M., this 27th day of January, A. D. 1874.

[SEAL.] R. J. PALEN, *Clerk.*

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Antonio Joseph, greeting:

You are hereby cited and admonished to be and appear at the term of the Supreme Court of the United States to be holden at the city of Washington, D. C., on the second Monday of October next, pursuant to a writ or error filed in the office of the clerk of the supreme court of the

Territory of New Mexico, wherein the United States of America are plaintiffs in error and Antonio Joseph is defendent in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Joseph G. Palen, chief-justice of the supreme court of the Territory of New Mexico, at Santa Fé, N. M., this 26th day of January, A. D. 1874.

J. G. PALEN,
Chief-Justice of the Supreme Court of the Territory of N. M.

(Indorsed:) United States vs. Antonio Joseph. Citation & proof of service.

Due service of the within citation is hereby admitted.
January 26, 1874.

R. H. TOMPKINS,
Atty. for Deft.

(Indorsement on cover:) No. 226. The United States of America, plaintiffs in error, vs. Antonio Joseph. New Mexico Terry. sup. court. Filed 15th August, 1874.

REC. 226—2